

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

DAWIT ALEMAYEHU, as the Personal  
Representative of the Estate of GELILA  
GEDION, decedent,

Petitioner,

v.

THE BOEING COMPANY, a corporation

Respondent.

Case No. 1:10-cv-03147

Hon. Samuel Der-Yeghiayan

**MOTION TO REMAND**

Petitioner, Dawit Alemayehu, as the Personal Representative of the Estate of Gelila Gedion, decedent (“Alemayehu”), by and through his attorneys, Korein Tillery LLC, respectfully moves this Court pursuant to 28 U.S.C. § 1447 to remand this cause of action to the Circuit Court of Cook County, Illinois, for the following reasons:

1. On March 30, 2010, Alemayehu filed a Verified Petition for Discovery Pursuant to Illinois Supreme Court Rule 224 (“Rule 224 Petition”) in the Circuit Court of Cook County, Law Division. A copy of Alemayehu’s Rule 224 Petition is attached as Exhibit A.

2. Respondent, The Boeing Company (“Boeing”), was served with process on April 26, 2010.

3. The Rule 224 Petition is an “independent action” filed “for the sole purpose of ascertaining the identity of one who may be responsible in damages” in connection with the January 25, 2010 crash of a Boeing 737 aircraft which was flying on a scheduled service from Beirut, Lebanon, to Addis Ababa, Ethiopia. Ill. Sup. Ct. R. 224(a)(1)(i).

4. To date, no information concerning any investigation of the crash of Flight 409 has been made available. Accordingly, the only way Alemayehu can identify the individuals or entities who may be liable to Alemayehu is to obtain the information requested in his Rule 224 Petition.

5. Alemayehu has not filed a formal complaint for damages against any party, but instead filed his Rule 224 Petition to identify those individuals or entities with “the potential for liability” so that he can “further define and narrow the universe of potential defendants” in this matter and avoid filing a frivolous lawsuit. *Beale v. EdgeMark Financial Corp.*, 664 N.E.2d 302, 309 (Ill.App. 1<sup>st</sup> Dist. 1996).

6. On May 21, 2010, Boeing filed its Notice of Removal of this case pursuant to 28 U.S.C. §§ 1369, 1441, and 1446. In its Notice of Removal, Boeing argues that removal is proper under Sections 1369 and 1441 because the events that underlie Alemayehu’s Rule 224 Petition concern a single air crash that involves at least 75 fatalities and minimal diversity is present.

7. Boeing’s Notice of Removal is improper because this Court does not have jurisdiction over Alemayehu’s Rule 224 Petition. As explained in detail in the accompanying Memorandum of Law in Support of Remand, Alemayehu’s Rule 224 Petition is not a “civil action” under Sections 1369 and 1441, but is merely “an independent action in discovery apart from any substantive lawsuit asserting a claim.” *Diaz v. City of Chicago*, 2009 WL 1034504 at \*5 (N.D.Ill. April 14, 2009); see also *Employers Insurance of Wausau v. Bodi-Wachs Aviation Insurance Agency, Inc.*, 39 F.3d 138 (7<sup>th</sup> Cir. 1994) (holding that a Rule 224 petition does not amount to a claim for damages).

8. This Court should not permit Boeing to improperly remove Alemayehu's Rule 224 Petition in an attempt to forum shop, and should remand this case to the Circuit Court of Cook County, Illinois.

9. Alemayehu has timely filed this Motion to Remand within thirty days of Boeing's filing of its Notice of Removal.

WHEREFORE, Petitioner respectfully requests this Court to:

- (a) Remand this case back to the Circuit Court of Cook County, Illinois;
- (b) Award Alemayehu his reasonable attorney fees, costs, and expenses incurred in conjunction with preparing this Motion to Remand and Memorandum of Law in support thereof; and
- (c) Grant any other relief this Court deems just and proper.

Respectfully Submitted,

**KOREIN TILLERY LLC**

Dated: June 18, 2010

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 18, 2010, I filed the foregoing **Motion to Remand** using the Court's CM/ECF system, which will send notification of such filing to the following:

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